

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

DANIEL KELLEY

PLAINTIFF

VS.

CIVIL NO. 3:14cv00512DPJ-FKB

J. BUSCHER, ET AL.

DEFENDANT

OMNIBUS HEARING

BEFORE THE HONORABLE F. KEITH BALL,  
UNITED STATES MAGISTRATE JUDGE  
OCTOBER 22, 2014  
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFF: MR. DANIEL KELLEY, PRO SE

FOR DEFENDANT BUSCHER: MR. STEVEN GRIFFIN

FOR DEFENDANTS LITTLE and EDWARDS: MR. ROBERT PEDERSEN

REPORTED BY: CHERIE GALLASPY BOND  
Registered Merit Reporter  
Mississippi CSR #1012

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245 E. Capitol Street, Room 120  
Jackson, Mississippi 39201  
(601) 965-4410

1 THE COURT: Court calls *Daniel Kelley v. J. Buscher*,  
2 *et al.* This is cause number 3:14cv512. Mr. Kelley, if you'll  
3 raise your right hand, please, sir.

4 (Plaintiff Sworn)

5 THE COURT: State your full name for the record.

6 MR. KELLEY: Daniel George Kelley.

7 THE COURT: And now I'll have defense counsel identify  
8 themselves for the record as well as the defendants on whose  
9 behalf they are appearing.

10 MR. GRIFFIN: Your Honor, Steven Griffin on behalf of  
11 Jerry Buscher.

12 MR. PEDERSEN: Bob Pedersen on behalf of defendants  
13 Ollie Little and Dr. Derrick Edwards.

14 THE COURT: Mr. Kelley, have you ever been through one  
15 of these omnibus hearings before?

16 MR. KELLEY: No, sir.

17 THE COURT: My name is Keith Ball. I'm the magistrate  
18 judge assigned to your case. There's also a district judge  
19 assigned to your case, Judge Dan Jordan. Your case falls under  
20 the Prison Litigation Reform Act, and one of the things that  
21 the court must do in such cases is to screen your complaint to  
22 see whether you have stated a claim upon which relief can be  
23 granted. By that, I mean the court's going to look at the  
24 facts that you're alleging in your complaint and look at the  
25 law, the applicable law, and see whether it's a case that can

1 go forward in this court. Do you understand?

2 MR. KELLEY: Yes, sir.

3 THE COURT: All right. Before we get into talking  
4 about your complaint, I want to address some procedural  
5 matters. As I said, there's a district judge and me as the  
6 magistrate judge assigned to your case. You can consent to  
7 magistrate judge jurisdiction. If you do that, then there  
8 would only be one judge assigned to your case and that would be  
9 me. If you don't consent, then I'm still going to do what's  
10 called a report and recommendation to the district judge  
11 recommending to the district judge how he should rule on  
12 certain things, and he will either adopt that or not adopt  
13 that.

14 If you consent to magistrate judge jurisdiction, then  
15 we would skip that step so the process would go a little  
16 faster. Also Judge Jordan, the district judge, has cases set  
17 for trial every month, and I don't. So, in short, I'm just  
18 saying the process would go a little faster if you consent to  
19 magistrate judge jurisdiction.

20 I want you to understand that if you consent to  
21 magistrate judge jurisdiction, I'm going to apply the same law  
22 that Judge Jordan would. I would apply the same rules, the  
23 same rules of procedure and same rules of evidence. And if you  
24 disagreed with rulings that I made, you could appeal me to the  
25 Court of Appeals just like you could the district judge.

1           Now, understanding that -- and if you have any  
2           questions, just let me know -- do you want to consent to  
3           magistrate judge jurisdiction?

4           MR. KELLEY: No, sir, not right now.

5           THE COURT: Okay. All right. Let's go on to the  
6           other part of the hearing. And, as I said, keep in mind that  
7           what I'm doing is screening your complaint to see whether it is  
8           one that can go forward. We have your complaint. You don't  
9           have to repeat what you already have in your complaint. But if  
10          you do feel like there's something I need to understand in  
11          determining whether you have stated a claim or not, this is  
12          your opportunity to do it.

13          Your claim, as I understand it, is that you are --  
14          you're making a claim that you were denied medical care, more  
15          specifically that you saw a dentist in September of 2013 at  
16          Parchman, I think it was, for sore, swollen, and bleeding gums,  
17          that you were prescribed some antibiotics and scheduled for a  
18          followup appointment on September 30th, 2013. But on  
19          September 25th, 2013, you were moved to East Mississippi  
20          Correctional Facility.

21          Your claim is that after you were transferred to East  
22          Mississippi, they stopped your antibiotics, that you weren't  
23          seen by a dentist until June 15th, 2014, at which time the  
24          tooth was pulled and you are essentially saying that you lost  
25          the tooth because of a delay in treatment.

1 MR. KELLEY: Even after putting in sick calls -- from  
2 the time I got to EMCF, I started putting in sick call requests  
3 to see a dentist about it. And even now four months later, my  
4 gums still bleed. I can spit mouthfuls of blood several times  
5 daily. My gums are still sore. All they did was pull a tooth  
6 out, and they didn't address none of the other issues as far as  
7 my gums swollen and bleeding and sore.

8 When I eat -- my gums hurt when I eat and bloody. I  
9 wake up in the mornings. My sheet is full of blood done leaked  
10 out over my sheets. I've got to wash my sheets two or three  
11 times. Just they didn't address nothing but pull my tooth out.

12 THE COURT: Okay. What is your diagnosis?

13 MR. KELLEY: I don't know. He didn't tell me nothing.  
14 The doctor -- the dentist at Parchman told me that I had a bad  
15 case of gingivitis. I didn't have no teeth that needed to be  
16 pulled out at the time. They needed to be cleaned. And he put  
17 me on antibiotics. Two days later I was transferred to EMCF.  
18 I didn't receive any more antibiotics. And even though I  
19 turned in several sick calls at least once a week, I didn't see  
20 the dentist until June 15th when Ms. Nato -- she's the one that  
21 got in touch with the officials to get me up there to see the  
22 dentist in June.

23 And even after that, he just pulled the tooth out and  
24 took an X ray of it. He pulled the tooth and sent me back to  
25 the zone. He prescribed some type of antibiotics, but I got

1     them for like two or three days and that was it. It didn't  
2     affect nothing.

3             THE COURT: All right. Why are you -- you've sued  
4     three defendants. Why are you suing Defendant Buscher?

5             MR. KELLEY: Because the warden, he's responsible for  
6     making sure that I get dental treatment, him and -- he has  
7     overall responsibility.

8             THE COURT: Okay. You're not claiming that he  
9     personally did something or failed to do something?

10            MR. KELLEY: He personally failed to make sure that  
11    the medical department -- make sure that I was brought up there  
12    all the time, and make sure that sick call requests were  
13    screened. I mean, that's the warden's responsibility and  
14    health service administrator's responsibility to make sure that  
15    inmates' sick call requests are screened and they get up there  
16    on time.

17            THE COURT: Is it your -- what's the basis of your  
18    testimony that the warden is responsible for going through all  
19    of the sick call requests?

20            MR. KELLEY: He's not responsible for going through  
21    each of them. He's responsible for making sure that inmates  
22    get their reasonably adequate and prompt treatment. He's not  
23    responsible to go through each of the sick call requests, but  
24    he's got a responsibility to make sure that, you know, if an  
25    inmate has a serious medical need, you know, him and the health

1 service administrator, they are responsible for making sure  
2 that it's addressed.

3 THE COURT: You're suing him because of his position  
4 for being the warden and being the one that's ultimately in  
5 charge of the facility?

6 MR. KELLEY: Yes, sir.

7 THE COURT: Defendant Little: Why are you suing  
8 Defendant Little?

9 MR. KELLEY: Because over -- he's in charge -- he's  
10 the health services administrator, and his responsibility, as I  
11 said, is the same almost the same as Defendant Buscher.

12 THE COURT: Did you have any personal dealings with  
13 Defendant Little?

14 MR. KELLEY: Just the second -- responsible for  
15 whether they finally responded to my ARP. He said he's going  
16 to get me up there on the 15th of June.

17 THE COURT: Prior to the ARP process, did you have any  
18 personal contact with Little?

19 MR. KELLEY: No, sir.

20 THE COURT: Defendant Edwards: Why are you suing  
21 Defendant Edwards?

22 MR. KELLEY: He was second-step responder on the ARP.  
23 He didn't address anything as far as the reason for the eight  
24 and a half month delay and, you know, during the eight and a  
25 half months, my gums were swollen, sore, and bleeding. I

1 couldn't eat. If I eat, I had to soak my food to soften it up,  
2 spitting blood, my teeth hurting, hurting all down my neck.

3 THE COURT: But I understand what you're claiming your  
4 injuries were and the pain that you went through, but I'm  
5 asking you what are you claiming that Defendant Edwards  
6 personally did or failed to do with respect to your treatment?

7 MR. KELLEY: Dr. Edwards didn't do anything. I  
8 included him because he was the third-step responder on the  
9 ARP. So he knew about it. I had filed separate ARPs before,  
10 you know, the April 2nd ARP. I sent a couple of them up there  
11 and so they knew that -- the ARP department, they knew that I  
12 had dental problems and it was -- but with that and my sick  
13 call requests, nothing was done.

14 THE COURT: All right. Did you go to sick call at all  
15 during this time period? Did you ever go to medical there at  
16 the facility?

17 MR. KELLEY: I went up there on February 27th, I think  
18 it was. I went up there about a cold. And I asked the nurse  
19 about my tooth, and she said I'm probably on the list but that  
20 was it. And I told her there it was a hole in it and it was  
21 bleeding and hurt and aching, and all she said was I was  
22 probably on the list and this was it. But I wasn't called up  
23 there because of that. I was called up because I had a cold.

24 THE COURT: Okay. All right. Does defense counsel  
25 have any questions?



1 MR. PEDERSEN: Yes, Your Honor. Bob Pedersen.

2 Mr. Kelley, after your tooth was extracted, that was in June of  
3 2014. Is that correct?

4 MR. KELLEY: Yes, sir.

5 MR. PEDERSEN: Have you been to see anybody about your  
6 problem with your gums since that?

7 MR. KELLEY: Well, on June 25th, the CO on the unit  
8 came and got me and took me to medical about a sick call  
9 request that I sent in on January 20th of this year and about  
10 my tooth getting pulled out. I told him about the gums still  
11 bleeding and stuff. And like I said, all I got after he pulled  
12 the tooth out, I got antibiotics for like three days and some  
13 mouthwash and that was it. And I've still been sending sick  
14 calls about my gums bleeding and bothering me and nothing has  
15 been done.

16 MR. PEDERSEN: Do you remember how many sick calls  
17 you've put in about your gums since that last visit when you  
18 got the antibiotics?

19 MR. KELLEY: About four, five.

20 MR. PEDERSEN: Do you remember what months you put  
21 those in?

22 MR. KELLEY: June, July, and August.

23 MR. PEDERSEN: That's all the questions I have, Your  
24 Honor.

25 THE COURT: All right.

1 MR. GRIFFIN: No questions.

2 THE COURT: I think we have done all we needed to do  
3 in this one today.

4 MR. GRIFFIN: On behalf of Defendant Buscher, I did  
5 bring a preliminary exhibit witness as well as the inmate's  
6 institutional records and ARP file related to this matter.

7 THE COURT: Let the record reflect those documents are  
8 being produced at this time. Mr. Pedersen?

9 MR. PEDERSEN: Your Honor, we have brought on behalf  
10 of Defendants Little and Edwards an exhibit list, a witness  
11 list, and selected medical records that are Bates numbered  
12 Kelley 1 through Kelley 38.

13 THE COURT: All right. Let the record reflect that  
14 those document are being produced at this time. Mr. Kelley?

15 MR. KELLEY: Before I got your order about the omnibus  
16 hearing, I had sent in because I had never -- this is -- I only  
17 had one other case that I sent in a request for production of  
18 documents, initial disclosure, and --

19 THE COURT: I will issue an order that will advise  
20 whether any discovery will be allowed. So your sending  
21 discovery was premature in the case. If you did send some, the  
22 defendants are not required to answer it at this time, and I'll  
23 issue an order that will direct whether there's going to be any  
24 discovery allowed in this case.

25 MR. KELLEY: My ARP documents, what do you --

1 THE COURT: What about them?

2 MR. KELLEY: Just to show that I did exhaust remedies  
3 before I filed and such.

4 THE COURT: I don't believe the defendant has filed a  
5 motion for summary judgment based on failure to exhaust  
6 administrative remedies. If it's not raised, it is not an  
7 issue. If it is raised, if they were to file such a motion,  
8 then you would be required within 14 days of that motion being  
9 filed to respond to it. And you would write up something. And  
10 if you have the ARP forms, you'd be required to -- that show  
11 that you completed the process prior to filing suit, you'd need  
12 to send that in. Okay?

13 MR. KELLEY: What do I do with the exhibit list, paper  
14 and --

15 THE COURT: You brought your exhibit list and witness  
16 list today?

17 MR. KELLEY: Yes, sir.

18 THE COURT: Okay. You can provide that to  
19 Ms. Kimball. We'll make a copy. Did you bring a copy, or is  
20 that the only one you have?

21 MR. KELLEY: That's what I have on my initial  
22 disclosure and such. So I don't need a copy back.

23 THE COURT: Okay. All right. Okay. Thank you very  
24 much. This matter is adjourned.

25 (Recess)

CERTIFICATE OF REPORTER

I, CHERIE GALLASPY BOND, Official Court Reporter, United States District Court, Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true and correct transcript of the proceedings had in the aforementioned case at the time and place indicated, which proceedings were recorded by me to the best of my skill and ability.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

This the 29th day of October, 2014.

s/ *Cherie G. Bond*  
Cherie G. Bond  
Court Reporter